DECISIONS OF AMERICAN COURTS ON POINTS OF PUBLIC LAW

JOHN T. FITZPATRICK

Law Librarian, New York State Library

Advertisements—Licensing. State vs. Murphy. (Connecticut. July 27, 1916. 98 A. 343.) It is not an arbitrary and unwarranted interference with a lawful business to require the issuance of a license and the payment of a license fee for the display upon real estate of advertisements containing more than four feet of surface. Such a regulation is within the taxing power of the legislature. The taxing power is vested in the legislature and it may exercise such power for lawful purposes in its discretion both as regards the subject matter of taxation and the extent and manner of the tax, except as constitutional limitations may intervene. And such power extends to persons, property, possession, franchise and privileges, occupations and rights, and reaches every trade or occupation, every object of industry, use or enjoyment. The display on a billboard or similar advertisement upon real property is a proper subject of taxation and the taxation thereof is a reasonable exercise of the taxing power.

Advertisements—Prohibiting Affixing on the Palisades. State vs. Lamb. (New Jersey. June 6, 1916. 98 A. 459.) To prohibit by legislative act the painting or printing upon or, in any manner placing upon or affixing any advertising notice to any of the steep rocks called the Palisades, on the Hudson River, is unconstitutional as depriving the owners of lands situated in the Palisades from using such lands for the purpose of advertising, when the signs do not endanger public safety or affect the health or morals of the community.

Advertisements—Publication of False and Fraudulent. Jasnowksi vs. Connolly. (Michigan. June 2, 1916. 158 N. W. 229.) "An act to regulate and prohibit false, deceptive, fraudulent and misleading advertising in newspapers, periodicals or other publications or by circulars or hand bills," is not unconstitutional as embracing two inconsistent subjects, prohibition and regulation, since the word "regulate" may be disregarded as surplusage. Nor is it unconstitutional for the same reason because the inhibition is extended to books, which are not mentioned in its title, since, under the rule of *ejusdem generis*, books are included with other publications.

Aliens—Chinese Persons. Ong Seen vs. Burnett. (United States. May 8, 1916. 232 Fed. 850.) The mere fact that a Chinese person admitted into the country and domiciled as a merchant thereafter becomes a laborer does not justify his deportation under a treaty between China and the United States authorizing the deportation of Chinese persons who are laborers. But the fact that the Chinese person, almost immediately upon his arrival, engaged in the occupation of a peddler, instead of a merchant, warrants a finding that he was admitted as a merchant under fraudulent respresentations, it appearing that he never engaged in business as a merchant.

Commission Government—Abandonment. State ex rel. Terry vs. Lanier. (Alabama. May 18, 1916. 72 S. 320.) An act providing a mode whereby cities, after an election on the question, may abandon the commission form of government and return to the aldermanic form, and providing for the retention in office of all employees, other than those whose offices are abolished, until their removal should be provided for by the mayor and aldermen of the city, does not violate a provision of the constitution providing for the impeachment of officers, as the act abolishes and does not remove the officers not retained, and as the officers retained whose offices were created or abolished by the commissioners have no fixed statutory office or term, and hence are not officers protected by the constitution. The commissioners have no vested right in their offices, which may be abolished at the will of the legislature.

Commission Merchants—Regulation. State ex rel. Brewster vs. Mohler. (Kansas. June 29, 1916. 158 P. 408.) An act which regulates the business of commission merchants who sell farm produce for resale is not unconstitutional as discriminatory or class legislation. And it is a valid exercise of the state's police power to require such commission merchants to make and furnish to the consignors of goods intrusted to them for sale on commission an accurate and detailed account of all the pertinent facts relating to such sales on commission; and the expense of making such a record and account is a proper charge upon the business and is not confiscatory.

Contempt of Court—Punishment. Flannagan vs. Jepson. (Iowa. July 7, 1916. 158 N. W. 641.) It is an unconstitutional authorization of infamous punishment to provide imprisonment at hard labor

as punishment for second or subsequent contempts for violation of liquor injunctions, in a proceeding not upon indictment or information. A crime is an offense against the sovereignty of a state for which upon conviction punishment is imposed, while a contempt is an offense against the authority of the court. So a statute imposing imprisonment at hard labor for contempt is unconstitutional as subjecting the accused to involuntary servitude for an offense not a crime.

Courts—Reversal of Former Decisions. Grifenhagen vs. Ordway. (New York. July 11, 1916. 113 N. E. 516.) A court should not undermine the law by reversing a former decision of that court unless it has been demonstrated to be erroneous through failure to consider a statute, prior decision, material fact, or other substantial feature, or unless through changed conditions it has become obviously harmful or detrimental to society. Certainty is of the very essence of the law. Shifting or changing rules or principles do not constitute law. The avoidance or prevention of litigation through the establishment by the courts of fixed and certain rules is a useful and beneficent effect of the litigations had.

Dentistry. People vs. Blair. (Michigan. July 21, 1916. 158 N. W. 889.) The title of an act providing for the examination, regulation, and licensing of persons engaged in the practice of dentistry, and for the punishment of offenses against the act, is broad enough to admit of an amendment, made under the original title, prohibiting any qualified physician or surgeon from extracting teeth except in certain emergencies, and forbidding such physician to advertise dental operations of any kind.

Elections—Absent Voting. Straughan vs. Meyers. (Missouri. July 3, 1916. 187 S. W. 1159.) An act regulating the manner in which voters who are absent from their place of residence may cast their votes, does not violate the constitutional provision requiring as a qualification to vote that the elector shall have resided in the county, city, or town where he shall offer to vote at least sixty days immediately preceding the election, since under such law, which specifically provides that the ballot shall not be deposited in the ballot box nor entered upon the poll books, but that the same shall under certain safeguards be transmitted to the county clerk and be there counted, the vote takes effect as required by the constitution, only in the place of his resi-

dence, although the voter exercises the means of voting elsewhere. Such an act is not class legislation because it applies to all persons alike who by reason of their business duties are unavoidably absent from the county.

Elections—Corrupt Practices. State vs. Pierce. (Wisconsin. June 13, 1916. 158 N. W. 696.) It is a violation of the constitutional provision providing that every person may freely speak and publish his sentiments, and prohibiting laws restraining the liberty of speech or the press, to forbid a person, not a candidate or a committeeman, spending money outside his own county for political purposes. Under the terms of such an act a man, or body of men, who are honestly convinced of the necessity of a change of policy in the government, commit a crime if they spend any money in another county than their own in bringing their views to the notice of the voters of such other county. Under such a law no pioneer in any reform which depends for its success on a change in the law could leave his own county and communicate his sentiments at his own expense to his fellow citizens in other counties without committing a crime. Under such a law no propaganda for better laws and better political conditions which has not been formally taken up by a political party can ever be carried on, as it is always highly improbable that a political committee will take up such a work for the very good reason that the party organization has not endorsed the doctrine.

Elections—Free and Open. Neelley vs. Farr. (Colorado. June 21, 1916. 158 P. 458.) Where coal companies connived with the local authorities to secure the creation of election precincts bounded so as to include the private property of the companies only, and with lines marked by their own fences or guarded by their own armed men, from which the public was excluded; and secured the election of their own employees as election officials, made the registration list from their own pay rolls, and kept them in their private places of business, and prohibited all public investigation as to the qualifications of the persons registered as electors within such precincts, the conduct of the election therein was such as to invalidate the entire poll. It is the essence of free elections that the right of suffrage be untrammeled and unfettered, and that the ballot represent and express the electors' own intelligent judgment and conscience. And there could be no free election within the precincts and under the conditions described.

Elections—Nomination by Fee. Patton vs. Withycombe. (Oregon. July 14, 1916. 159 P. 78.) A provision that in addition to the method of nomination by petition a person may file a declaration of candidacy and by the payment of a fee become a candidate for office, is not unconstitutional. Such an act does not in any way add to the qualifications of an elector desiring to become a candidate. No person is obliged to pay a fee, for the method requiring a fee is optional. The elector may create the right to become a candidate, either by a mere declaration and the payment of a fee, or by a petition without a fee, and a statute requiring the payment of a reasonable fee places no obstacle or impeachment in the way of a person whether he be rich or poor, so long as another method like the one here requiring no fee is open to him.

Explosives—Carriage of—International Law. Horn vs. Mitchell. (United States. April 27, 1916. 232 Fed. 819.) It is no defense to a charge of carrying explosives in a passenger vehicle operated by a common carrier in interstate commerce, that the accused was an officer in the army of a foreign country engaged in war, and that the explosive was so carried for the purpose of being used in an alleged act of war in the enemy's territory. The mere fact that the accused held a commission in the army of his country raises no presumption that he was acting under the authority of his government, so as to raise any question of international law.

Foods—Sale of Eggs. Ex parte Foley. (California. June 21, 1916. 158 P. 1034.) An act declaring that any dealer selling eggs imported from without the United States shall stamp each egg "Imported" and shall display at his place of business a sign "Imported eggs sold here," but which does not require the dealer to disclose the age of his imported eggs, is not, in view of the fact that in portions of the State eggs can be imported from foreign countries in a shorter time than they can be brought from other portions of the State and the United States, a valid exercise of the police power, and is void as interfering with foreign commerce, it being obvious that the purpose of the statute was not to protect the public health against unwholesome eggs, but merely to prejudice dealers against imported eggs in favor of the local product.

Foreign Corporations—Right of State to Exclude. Citizens' Ins. Co. vs. Hebert. (Louisiana. June 5, 1916. 71 S. 955.) A State has the right to exclude a foreign insurance company that has established a business in the State. The permission previously given such a com-

pany to do business in the State is not a vested right, nor is such permission a contract.

Highway Districts. Rinder vs. City of Madison. (Wisconsin. June 13, 1916. 158 N. W. 302.) The making of highway districts coextensive with counties does not unconstitutionally deny to cities the equal protection of the laws or lack uniformity, although taxing cities for improvements not directly benefiting them. If a rule for taxation should be adopted which limits the right of taxation for public improvements to such property only as it can be shown is directly benefited by such improvements, it would result in endless confusion and litigation, and render void many acts for the government of towns and counties. It is for the legislature to fix the limits of taxing districts and not for the courts.

Housing. Byrne vs. Maryland Realty Co. (Maryland. June 23, 1916. 98 A. 547.) A housing law for the city of Baltimore containing a provision that no dwelling house shall be erected within a defined section of that city, unless such dwelling house be constructed as a separate and unattached building, and, if of frame construction, to be at least twenty feet apart, and, if of stone or brick construction, at least ten feet apart, is unconstitutional. The owner of a lot within that section of the city cannot be deprived of his right to improve it in violation of the provisions of this act, where in the violation there is nothing inherently menacing the public health or safety, and since property rights cannot be invaded for purely aesthetic purposes under the guise of the police power.

Housing—Erection of Store in Residential District. State ex rel. Lachtman vs. Houghton. (Minnesota. July 28, 1916. 158 N. W. 1017.) A municipal ordinance prohibiting the erection of a store building upon land within a residential district cannot be sustained as a legitimate exercise of the police power. The use which an owner may make of his property is subject to any reasonable restrictions and regulations, imposed by the legislative power, which tend to promote the public welfare or to secure to others the rightful use and enjoyment of their own property; but only such use of property as may produce injurious consequences, or infringe the lawful rights of others, can be prohibited without violating constitutional provisions that the owner shall not be deprived of his property without due process of law.

Indians—Jurisdiction of Federal and State Governments. United States ex rel. Lynn vs. Hamilton. (United States. November 4, 1915. 233 Fed. 685.) While maintaining their tribal organizations and residing on reservations set apart for them by, or with the consent of, the general government, Indian tribes have always been regarded as wards of the nation, and not subject to state laws even when their reservations are located within the borders of a State. The power of congress to govern Indian tribes by legislation, and thereby abrogate or supersede Indian treaties has been upheld by the United States supreme court. The principle that a State may act in the absence of affirmative legislation on the part of congress is not applicable to the government of tribal Indians. So if Indian tribes are wards of the federal government and owe no allegiance to any State, and if the power over the Indian tribes rests with the federal government because it exists nowhere else, and if from necessity there can be no divided authority, then the jurisdiction of Congress must be exclusive, and the state laws cannot extend to tribal Indians. Consequently the conservation laws of the State of New York do not extend over the Indians residing in tribal relations upon reservations within the borders of that State, and an Indian so living in tribal conditions is not liable for a violation of that law in fishing within the bounds of his reservation with a net without the required license.

Marriage—Exception of Persons of Particular Religious Faith. Fensterwald vs. Burk. (Maryland. June 23, 1916. 98 A. 358.) An exception in a statutory prohibition against marriage between uncle and niece in favor of persons of the Jewish faith does not contravene the constitutional provision providing that one's religious opinions shall not enlarge his civil capacity. Where such a marriage between uncle and niece is valid under the laws of Rhode Island, the State where the marriage was performed, it is valid in Maryland, not being incestuous "according to the generally accepted opinion of Christendom."

Milk—Regulation of Sale. State vs. Stokes. (Connecticut. July 27, 1916. 98 A. 294.) A regulation of the board of commissioners of public health of a city prohibiting the sale of milk in stores unless contained in sealed bottles, does not conflict with a state act fixing a milk standard, and penalizing the placing of certain substances in milk containers and defining impure milk. Nor is such a regulation an

invalid classification where it applies to the sale of milk in stores, bakeries and butcher shops, but does not apply to dairymen and farmers.

Monopolies. United States vs. United Shoe Machinery Co. (United States. June 6, 1916. 234 Fed. 127.) The Clayton anti-trust act, making it unlawful for any person engaged in commerce, in the course of such commerce, to lease or sell goods, machinery, etc., on any condition that the lessee or purchaser shall not use or deal in goods or machinery of a competitor of the lessor or seller, where the effect may be substantially to lessen competition or tend to create a monopoly, as applied to leases made in the conduct of interstate business, is within the constitutional power of congress.

Monopolies—Regulation of Sale of Hog Cholera Serum. Hall vs. State. (Nebraska. June 3, 1916. 158 N. W. 362.) A limitation of the sale of hog cholera serum to persons holding United States government veterinary licenses and a permit from the live stock sanitary board, is an attempted restriction on the power of the citizen to buy and sell hog cholera serum and is unconstitutional for the reason that any person has the right to adopt and follow any lawful industrial pursuit which is not injurious to the community. Such an act gives a monopoly to the serum-manufacturing plant, because it is the plant that is licensed under the federal act. A further provision that no one shall give or accept a rebate or commission on serum sold or offered for sale, is an additional bar preventing the farmer from purchasing serum with which to treat his own hogs, and preventing the veterinary surgeon from purchasing serum with which to treat hogs belonging to his employers.

Mothers' and Old Age Pensions—Constitutionality of Act. State Board of Control vs. Buckstegge. (Arizona. July 1, 1916. 158 P. 837.) The title of an act entitled "An act providing for an old age and mothers' pension and making appropriation therefor," does not express the subject of the act which provides not only for the establishment of old age and mothers' pensions, but also covers the abolition of the statutory system of county hospitals and poor farms, leaving the different counties without any means or provisions for the care of their indigent sick and poor, not entitled to pensions. Such an act is also invalid for the reason that it requires the support by pension of cer-

tain mothers with dependent children regardless of their financial condition.

Parole-Consent of Party. Ex parte Taggert. (Oklahoma. June 24, 1916. 158 P. 288.) Before the court can make the conditions of a parole binding upon a party convicted, that party must consent to the terms and conditions thereof. He is a party at interest and must be consulted, he alone has the right to accept the parole with the conditions imposed, or to reject it as he sees fit. And to bind him by the terms of the parole his consent must affirmatively appear.

Statutes—Construction. Perrault vs. Robinson. (Idaho. June 29, 1916. 158 P. 1074.) Statutes enacted at the same session of the legislature should receive a construction, if possible, which will give effect to each. They are within the reason of the rule governing the construction of statutes *in pari materia.* They are to be construed together, and should be so construed if possble, as to harmonize and give force and effect to each. If, however, they are necessarily inconsistent, the statute which deals with the common subject matter in a more minute and particular way will prevail over that of a more general nature.

Statutes—Construction of Revisions. Wipperman Mercantile Co. vs. Jacobson. (Minnesota. June 23, 1916. 158 N. W. 606.) In construing the revision of the laws of a State reference may be had to the report of the commission which drafted it, as the legislature undoubtedly gave weight to such report in enacting it. Reference may also be had to the history of the law and the purpose sought to be accomplished thereby. The presumption is that no change in the existing law was intended by the revision; and to give it the effect of changing the former law, the intention to make such change must clearly appear from the language of the statute when taken in connection with the history of the act and the purpose sought to be accomplished by it.

Statutes—Direct Legislation—Preamble. State ex rel. Berry vs. Superior Court. (Washington. July 5, 1916. 159 P. 92.) The preamble to a statute is an introductory clause which states the motive, design, reason or intent thereof. A preamble is not an essential part of a statute, has no legislative force, and is of importance only as a guide to an understanding of the statute with reference to the legisla-

tive intent in case of doubt or ambiguity. Under a constitutional provision for direct legislation there is no constitutional right given to propose a preamble to a proposed initiated law, and the courts will enjoin the publication at the expense of the State of a proposed preamble containing purely argumentative matter in support of an initiated act. While neither the judicial nor the executive branches of the government can interfere to prevent a delegated member of a legislative body from introducing a bill no matter how novel or foolish, the initiator of a bill, under the system of direct legislation, is not a legislator with whose acts in proposing the bill the courts cannot interfere. The initiator of direct legislation must proceed in accordance with the positive law prescribing the method of such legislation, and the courts will interfere by injunction in proper cases to prevent submission in disregard of such laws.

Statutes—Right of Courts to Determine Constitutionality. Terrell vs. Middleton. (Texas. June 14, 1916. 187 S. W. 367.) Whatever doubts may have existed at one time as to the authority of courts to decide upon the constitutionality of statutes, that matter has been definitely settled in favor of the affirmative, and while it may be a subject of regret that the court of last resort has seemed desirous at times of usurping the full powers of government, and laying itself open to the charge of shaping the policies and principles of our government, the fact has been settled beyond recall that courts, federal and state, have the authority ultimately to destroy or enforce laws passed by the legislative branch of the government.

Taxation—Railroad Terminals—Collection for Localities. State ex rel. City of Superior vs. Donald. (Wisconsin. June 13, 1916. 158 N. W. 317.) An act provided that the state tax commission make a valuation of the docks, piers, wharves and grain elevators used in transferring freight or passengers between railroad cars and vessels, separate from the valuation of the property of a railroad company as a whole, and that the taxes derived from such separately valued property be distributed to the towns, villages, and cities in which such property is located. An objection that the act appropriates money of the State for local purposes cannot be sustained since the funds are not state funds but funds belonging to the locality which have been collected by the State as a matter of convenience. Nor does the statute violate the rule that taxation be uniform, as the law does not

change in the least the taxpayer's burden, since he pays the same amount whether his whole tax remains in the state treasury or whether part of it goes to the treasury of a locality. Nor does the statute accomplish a discrimination between the taxing units of the State, since the marine terminal imposes upon the locality in which it is located responsibilities, duties and financial obligations not shared by municipalities possessing only ordinary railroad property.

Trials—Right to Public Trial. Roberts vs. State. (Nebraska. July 1, 1916. 158 N. W. 930.) The law requires that trials shall be public, but this requirement is satisfied by admitting those who can conveniently be accommodated in the court room, where the law requires such trial to be held, without interrupting the calm and orderly course of justice. It is not proper to adjourn a criminal trial for a capital offense from the regular court room to the stage of a public theater, without sufficient cause for so doing.

Workmen's Compensation Act—Constitutionality. Greene vs. Caldwell. (Kentucky. June 6, 1916. 186 S. W. 648.) A workmen's compensation act is not unconstitutional as depriving of property without due process of law because taking from a non-accepting employer certain defenses, since the employer has no vested rights in such defenses, and the legislature could take them all away without giving any election at all. Nor is it invalid as establishing a court; for the workmen's compensation board, established by it, is not a court but a board of arbitrators from whose decision an appeal lies to a court. Nor is it unconstitutional because not allowing a jury trial, since the parties accepting agree to trial without jury.